

August 12, 1990

Reply to  
ATTN of HW 112

Mark A. Norman  
Vorys, Sater, Seymour and Pease  
Post Office Box 0236  
Cincinnati, Ohio 45201-0236

US EPA RECORDS CENTER REGION 5



1007942

Dear Mr. Norman:

I apologize for my delay in responding to your telephone request and subsequent letter. Pursuant to your request, I have enclosed copies of the following: (1) a 3008(h) consent agreement, (2) comments on an RCRA Facility Investigation (RFI) workplan, (3) an RFI workplan approval letter and (4) a denial of petition for review by the EPA Chief Judicial Officer of permit conditions requiring an RFI workplan for an oily process sewer. I hope these are not arriving too late to be of interest to you.

Sincerely,

(15)

Carrie Sikorski, Chief  
RCRA Permits Section

Enclosures

✓ cc: Peg Andrews, EPA Region 5

468-58

final  
9-30-88  
3008(h)

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
EPA REGION 10, 1200 Sixth Avenue  
Seattle, Washington 98101

RECEIVED

OCT 6 - 1988

HEARINGS CLERK  
EPA-REGION X

IN THE MATTER OF:

Chemical Processors, Incorporated )  
Washougal Facility )  
Washougal, Washington )  
(WAD092300250) )

AGREED ORDER

RESPONDENT. )

EPA Docket No. 1088-09-03-3008(h)

Proceeding under Section 3008(h)  
of the Resource Conservation and  
Recovery Act, 42 U.S.C. §6928(h)

AT

I. RECITALS

In 1985, Sweet Edwards/EMCON completed a ground water and soil study of the McClary Columbia facility, which included the installation of multiple monitoring wells and the collection of a number of soil samples. The work was performed under agreement and supervision by the Washington Department of Ecology. The results of this study indicated the presence of hazardous constituents in the soil and ground water underlying the facility.

By letter dated January 25, 1988, the Environmental Protection Agency (EPA) notified Chemical Processors, Incorporated of the EPA "Revised Off-Site Policy" which established requirements that hazardous waste facilities must receive a RCRA Facility Assessment (RFA) before receiving waste from a Superfund site. In addition, if there is evidence of release of contaminants, then an approved Subtitle C Corrective Action program must be in place controlling such releases.

1 After receiving the January 25 letter, Chemical Processors, Incorporated  
2 contacted EPA and requested a meeting to begin the process of addressing the  
3 requirements of the Off-Site Policy. In part, at Chemical Processors's  
4 request, RFA's were scheduled and completed at three (3) Chemical Processor  
5 facilities and meetings were held to negotiate corrective action orders at  
6 Chemical Processors' four (4) facilities. Monitoring, Analysis and Testing  
7 orders, pursuant to Section 3013 of RCRA were signed by EPA for Chemical  
8 Processors' Tacoma and Pier 91 facilities on June 30, 1988 to evaluate the  
9 rate and extent of hazardous constituent release. The orders were accepted by  
10 Chemical Processors on July 11, 1988 and work was commenced immediately.  
11 Written proposals for sampling, analysis, monitoring and reporting for both  
12 facilities were submitted within 30 days as required under each order.

13 Chemical Processors has directed its consultant to continue preparation of  
14 a draft RCRA Facility Investigation workplan while negotiating a consent order  
15 for the McClary Columbia facility and is prepared to perform the work  
16 necessary to characterize the soil and ground water.

## 17 II. JURISDICTION AND AGREEMENT

18 1. This administrative order ("Agreed Order" or "order") is issued pursuant  
19 to the authority given to the Administrator of the United States Environmental  
20 Protection Agency ("EPA") by Sections 3008(h) of the Solid Waste Disposal  
21 Act, also called the Resource Conservation and Recovery Act of 1976 ("RCRA"),  
22 42 U.S.C. §6928(h). The authority of the Administrator has been delegated to  
23 the Regional Administrators by EPA Delegation Nos. 8-31 and 8-32 dated  
24 April 16, 1985. This authority has been further delegated to the Director,  
25 Hazardous Waste Division, EPA Region 10.  
26  
27  
28



1 2. A. The following items are initial Attachments to this order and  
2 they are, by this reference, incorporated verbatim herein:

- 3 (A) Facility sketch and layout and its surroundings.  
4 (B) Specification of Tasks I through XI for RFI and CMS.  
5 (C) Schedule for Performance of Tasks in Attachment  
6 (D) Format for the RFI Report  
7 (E) Ground Water Investigation report, December 17, 1985

8 B. If and when a Part B permit is issued by EPA and/or the Washington  
9 State Department of Ecology for this facility, then that permit will, in  
10 meeting the requirements of 3004(u) of the Act, incorporate the corrective  
11 active provisions of this order including items incorporated into or to be  
12 incorporated into this order.

13 3. This Agreed Order is issued to the Respondent "Chemical Processors,  
14 Incorporated", the owner/operator of the McClary Columbia Corporation facility  
15 located at 625 So. 32nd Street, Washougal, Washington.

16 4. Agreement to the terms of this order (a) equitably and directly estop  
17 both the Respondent and EPA from altering, challenging, or contesting its  
18 terms or EPA's jurisdiction and authority to issue it, except as may be  
19 otherwise provided elsewhere in this order, and (b) does not collaterally  
20 estop either EPA or the Respondent as to any claim by any person not a  
21 signatory to this order..

22 5. Respondent shall have the right and power to contest and controvert (as  
23 against EPA and every other opposing party) those findings of fact and  
24 conclusions of law set out in parts IV and V below (including findings  
25 relating to jurisdiction), except that it may not do so in a proceeding  
26 brought at EPA's request for the specific enforcement of the terms of this  
27 agreed order or for the imposition or collection of penalties provided for in  
28 paragraph 31 below. Respondent neither admits nor denies (for the purpose



1 only of this proceeding) such findings of fact and conclusions of law, but  
2 that conduct and Respondent's consent and agreement to issuance of this order  
3 shall not constitute admissions by Respondent for any other purpose, or in any  
4 proceeding collateral to the instant proceeding, and any person who is not a  
5 signatory to this order may not cite or use the contents of this order as  
6 evidence against EPA or against the Respondent to this order.

7 6. (a) This order may issue in its present form containing the findings of  
8 fact, conclusions of law, and commands set forth below, and Respondent will  
9 not contest that EPA has jurisdiction (A) to issue this order; (B) to compel  
10 (through later administrative/judicial enforcement proceedings) compliance  
11 with this order; and (C) to obtain hereafter (judicially and/or  
12 administratively) any applicable sanctions for violations of this order.

13 (b) Respondent waives all rights it may have pursuant to RCRA §3008(b),  
14 41 U.S.C. §6928(b), or otherwise, as follows: (1) to pursue administrative  
15 remedies now to contest issuance of this order; (2) to have an opportunity for  
16 an administrative adjudicative (or public) hearing now regarding the issuance  
17 of this order; (3) to receive or have EPA issue a notice of hearing or  
18 complaint now regarding the issuance of this order; (4) to assert now or at  
19 any later time any current or previous error under 40 CFR Parts 22 or 24  
20 regarding the issuance of this order; (5) the compilation prior to the  
21 effective date of this order of any materials as the agency's informal  
22 administrative record supporting this order; and (6) to contest this order or  
23 its specific terms.

### 24 III. ENTITIES BOUND

25 7. The terms of this order shall not be disregarded or violated by  
26 Respondent through any person acting for or on behalf of the Respondent  
27 (including its officers, directors, employees, agents, successors and assigns,

28 AGREED ORDER Page 4

1 independent contractors, contractors, and consultants). Neither this  
2 provision nor paragraph 9 below shall operate to legally obligate anyone  
3 (other than Respondent) to EPA as a party of record or a party respondent to  
4 this order.

5 8. No change in ownership of any interest in the facility, or any change in  
6 Respondent's corporate or partnership status, will in any way diminish  
7 Respondent's duties imposed by this order.

8 9. Respondent shall provide a copy of this order to all contractors,  
9 laboratories, and consultants retained to conduct or monitor any portion of  
10 the work performed pursuant to this order. Such copies shall be provided not  
11 later than 7 calendar days after the later of the effective date of this order  
12 or the date an entity is retained. The terms of this order shall be a  
13 condition and also a specification in all arrangements by which such entities  
14 are so retained.

15 10. Respondent shall give notice of this order to any successor in interest  
16 at least 60 calendar days prior to transfer of ownership of an interest in, or  
17 transfer of the operation of, the facility and shall notify EPA not later than  
18 30 calendar days before any such transfer.

19 IV. STATEMENT OF PURPOSE

20 11. The goals of EPA and Respondent by agreeing to this order are:

21 A. To provide for the performance of a RCRA Facility Investigation  
22 ("RFI") by Respondent with respect to the Facility;

23 B. To provide for the performance of a Corrective Measures Study ("CMS")  
24 by Respondent dependent upon and in accordance with whatever findings may  
25 be determined by the RFI and such other data necessary to perform a proper  
26 CMS which is available to EPA and the Respondent with respect to the  
27 facility; and



1 C. To provide an informational basis upon which corrective action within  
2 the meaning of RCRA §3008(h), may be taken at the facility to the extent,  
3 if at all, indicated by the CMS.  
4

5 V. FINDINGS OF FACT

6 12. Respondent is a corporation doing business in the State of Washington  
7 and is a person as defined in section 1004(15) of RCRA, 42 U.S.C. §6903(15).  
8 Attachment A provides a depiction of the facility in relation to its  
9 surroundings and a plot plan of the Respondent's facility is shown in  
10 Figure I.

11 13. On or about August 6, 1980, Respondent submitted to EPA its notificaton  
12 of hazardous waste activity (EPA Form 8700-12) pursuant to Section 3010 of  
13 RCRA as a generator of hazardous waste at its 625 So. 32nd Street, Washougal,  
14 Washington facility, EPA I.D. No. WAD092300250. The notification identified  
15 Respondent as both a generator and an owner/operator of a treatment and  
16 storage facility for E.P. toxic, K030, F001, F002, F003, F004, & F005,  
17 wastes. Subsequent notifications have expanded the waste types identified as  
18 handled at the facility (e.g., January 27, 1986).

19 14. On or about November 19, 1980, Respondent submitted its Part A permit  
20 application pursuant to Section 3005(e) of RCRA and so qualified its facility  
21 for interim status. Operations identified at the facility include drum and  
22 tank storage of hazardous waste.

23 15. Observations noted in a report dated December 17, 1985 prepared for  
24 Respondent by its consultant Sweet, Edwards & Associates, Inc. include:

25 (a) The facility is underlain by a surficial layer of fine to medium  
26 grained dredge spoil sand, overlying native alluvial silt. The dredge  
27 spoil sand layer comprises the uppermost aquifer at the facility which is  
28 perched on the alluvial silt.



(b) Significant concentrations of selected organic contaminants were detected in ground water from monitoring wells onsite. This contamination is suspected to originate from discrete source areas (Areas 8 and 9 on Figure II)

(c) Sampling and analysis of onsite soils by Respondent's laboratory during three separate sampling events (i.e., in the months of April, May and October 1985) include the following selected results:

CONSTITUENT	CONCENTRATION (ppb)	
	AREA 8	AREA 9
1,1,2,2-tetrachloroethane	--	50
tetrachloroethene	--	26
ethylbenzene	--	27
p-xylene	--	200
arsenic	9.4	24.9
chromium	8.1	26.8
zinc	47.5	67.9

(d) Samples of facility soils collected in March 1985 and analyzed by the Washington Department of Ecology laboratory (Appendix M of the report) showed significantly more constituents than observed by Respondent's laboratory for Areas 8 and 9. Selected results are:

CONSTITUENT	CONC. (ppb)	
	Area 8	AREA 9
pyrene	74	2,300
acetone	--	62,000
toluene	13	13,000
tetrachloroethene	--	7,500
total xylenes	38	22,000
naphthalene	820	3,700

(e) Sampling and analysis of onsite monitoring wells for Respondent during three separate sampling events (i.e., in the months of April, May and October 1985) include the following selected results:

CONSTITUENT	CONCENTRATION (ppb)				
	MC-1	MC-7	MC-8S/8	MC-13	MC-14
toluene	15	11,000	110K/66K	11	--
total xylenes	13	24,000	17K/19K	--	2,100
ethylbenzene	--	1,000	3.6K/11.5K	--	--
trichloroethene	160	4.5	1.5K/1.4K	--	7.8
1,1,1 TCA #	520	39	8.6K/1.8K	--	1,300
arsenic	26	35	24/14	3	38

# 1,1,1-trichloroethane  
values given with a "K" are in thousands of ppb

(f) Ground water samples collected on April 4, 1985 and analyzed by the Washington Department of Ecology laboratory (Appendix M of the report) showed the following results:

CONSTITUENT	CONCENTRATION (ppb)				
	MC-1	MC-7	MC-8S	MC-8D	MC-8
toluene	8	5,200	5,700	140,000	35,000
total xylenes	3	12,000	8,900	14,000	20,000
ethylbenzene	--	1,000	1,900	3,000	2,500
trichloroethene	140	71	2,300	2,400	560
1,1,1 TCA	600	200	--	3,900	1,600
arsenic	19	3	20	13	3

16. Based on the information provided in the above Findings, hazardous constituents listed in Appendix VIII of 40 CFR Part 261, have been detected in the underlying ground water at the facility. These hazardous constituents include:

CONSTITUENT	HIGHEST CONC. DETECTED (ppb)	MCL	WATER QUALITY CRITERIA
trichloroethene	1,500	5	21,900
1,1,1 TCA	8,600	200 #	--
toluene	140,000	--	17,500 *

\* acute fresh water quality criteria given rather than chronic

# Recommended Maximum Contaminant Level

The concentration of trichloroethene observed in the ground water exceeds the Maximum Contaminant Level (MCL) established for the protection of drinking water supplies. The level of toluene detected in the ground water, if discharged undiluted to surface water may result in acute toxicity to fish in the Columbia River located south of the facility and in Gibbons Creek and marshland, located north and east of the facility. Both of these surface waters are likely recipients of ground water discharge in the area.

17. During the period of April 23 and 24, 1986 a comprehensive ground water monitoring evaluation was performed at the facility by the Washington Department of Ecology and EPA. Major observations noted during the inspection include: activities at the facility have resulted in significant contamination of the uppermost aquifer and the connection between the lower and upper aquifer had not been adequately characterized.

1 18. The City of Washougal public supply wells are located approximately one  
2 half mile north of the facility, screened at approximately 100 feet depth.  
3 Domestic wells are known to exist in the area and two industrial wells are  
4 located within one quarter mile of the facility. The Columbia River is used  
5 both for recreation and as a source of drinking water for downstream  
6 communities (e.g., City of St. Helens).

7  
8 VI. CONCLUSIONS OF LAW AND DETERMINATIONS

9 19. Based on the Findings of Fact set out in Section V above, The United  
10 States Environmental Protection Agency ("EPA") makes the following conclusions  
11 of law and determinations:

12 A. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42  
13 U.S.C. §6903(15);

14 B. Respondent is and was the owner and operator of a facility that has  
15 operated and is operating subject to §3005(e) of RCRA, 42 U.S.C. §6925(e).

16 C. Certain wastes and constituents thereof found at the Facility are  
17 hazardous wastes or hazardous constituents thereof as defined by §1004(5)  
18 of RCRA, 42 U.S.C. §6903(5). These are also hazardous wastes or hazardous  
19 constituents within the meaning of 3001 of RCRA, 42 U.S.C. §6921 and 40  
20 C.F.R. Part 261.

21 D. Releases into the environment of hazardous wastes and/or hazardous  
22 constituents are occurring or have occurred at and/or from Respondent's  
23 Facility.

24 E. The activities described and referred to in paragraphs 20 through 42  
25 of this order are necessary and appropriate to protect human health or the  
26 environment and the Respondent should be ordered to perform them.



VII. ORDER

20. Accordingly, it is hereby ORDERED that the Respondent shall perform, comply with, and obey each of the provisions hereinafter set forth in this Order.

Performance of Work and Preparation of Plans.

21. A. General.

(1) All work shall be performed in the manner and by the dates described in this order, its attachments, and in the completed plans, in order to adequately accomplish corrective actions at the facility.

(2) All work undertaken or performed pursuant to this order, and all plans developed to comply with this order, shall be done or made in a manner consistent with the following:

(a) The initial and any later items incorporated or to be incorporated into this order;

(b) Any EPA-approved Interim Measures Workplan;

(c) Any EPA-approved RCRA Facility Investigation Workplan, Corrective Measures Implementation Plan, or other Workplan;

(d) RCRA and its implementing regulations; and

(e) Applicable EPA guidance documents listed in Attachment B and future guidance documents which become operative and available prior to Respondent commencing activities to which the guidance relates:

Interim Measures.

B. (1) Based on the nature and extent of contamination from releases at or from the Facility (which contamination factors are known and/or learned and/or estimated from information currently available), and based upon the potential health and environmental impacts which can be predicted with reasonable scientific certainty from such information, Respondent shall

(if a definite need to protect health and/or the environment is determined by Respondent or EPA to exist based upon Respondent's investigations) compose and formulate a set of interim measures which, if implemented, can mitigate the release at or from the facility of hazardous wastes and/or constituents, and/or which can effectively mitigate the impact on receptors affected by such releases. If Respondent performs (or has performed or is performing) what amounts to interim measures, then to the extent those interim measures are done pursuant to a governmental or court directive, the directive therefor as well as the work products and deliverables resulting therefrom shall be incorporated (pursuant to this reference) into this order, and any work done by Respondent reflected therein shall be deemed tendered as satisfying (partially or totally) any requirement of this order which calls for, in effect, substantially the same work and/or equivalent work product.

(2) Such interim measures shall be initially described, evaluated, and reported by Respondent. Thereafter, the most recent report of the same shall be periodically reviewed and re-evaluated (and revised to address new and relevant information) every six calendar months.

(3) The initial and each periodic interim measures report and evaluation shall be completed by Respondent (and a report thereof submitted to EPA) not later than the 45th calendar day after the last day of the calendar month in which this order becomes effective. The second six month period begins on the first calendar day of sixth calendar month after the month in which this order becomes effective. A periodic report indicating that review and re-evaluation has occurred on time but that no revision appears appropriate based thereon, may satisfy the remaining duties of Respondent indicated in subparagraphs (4) through (10).



1 (4) The initial and each revised (if any) interim measures report and  
2 evaluation shall include a written brief narrative:

- 3 (a) summarizing all available monitoring data and qualitative  
4 information about the locations and levels of contamination  
5 at the facility in all potential migration pathways; and  
6 (b) evaluating potential migration pathways including a review  
7 of facility characterization information (including  
8 information about geology, pedology, hydrogeology,  
9 physiography, hydrology, water quality, meteorology, and  
10 air quality); and  
11 (c) evaluating the the potential impacts on human health and  
12 the environment (including consideration of demography,  
13 subsurface water uses, surface water uses, and land uses).

14 (5) If, after any such report is submitted to it, EPA determines that  
15 the implementation of interim measures is appropriate, a draft workplan  
16 for those measures indicated by EPA shall be composed and developed by  
17 Respondent and shall be submitted to EPA for EPA's review, comment,  
18 approval, and/or modification. The draft workplan shall be submitted to  
19 EPA not later than 90 days after receipt by Respondent of EPA's indication  
20 that interim measures should be implemented at the Facility.

21 (6) The draft workplan shall include (as a minimum):

- 22 (a) Interim/measure objectives. The objectives of each interim  
23 measure identified and described (e.g., stating how the  
24 measure does or will mitigate a potential threat to human  
25 health and/or the environment; and showing how each such  
26 measure is consistent with and can be integrated into any  
27 long term corrective action at the Facility);  
28 (b) Design plans and specifications displaying and describing  
the design and construction requirements for each such  
measure;  
(c) An operation and maintenance plan describing the operation  
and maintenance requirements for each such measure;  
(d) A project time schedule for implementing each such measure  
and a time schedule for submitting progress reports;  
(e) A health and safety plan for each measure to be implemented;  
(f) A public involvement plan for the measures to be  
implemented;



(g) A data collection and management plan relating to the measures to be implemented;

(h) A data collection quality assurance plan; and

(i) An interim measures construction quality assurance plan.

(7) Depending on the interim measures proposed in the draft workplan, EPA may by notice invite public review and comment on the draft workplan. If that is done, EPA's final comments to Respondent shall include any public comments received.

(8) Not later than the 30th day after receipt from EPA of its final comments on the draft workplan, the Respondent shall modify the draft workplan to accommodate EPA's final comments and shall promptly resubmit the revised workplan for EPA approval.

(9) If the Respondent disputes the appropriateness of having any interim measure conform with EPA's final comments, the Respondent may invoke the dispute resolution process in paragraph 32 below.

(10) EPA may then approve any portions of the submitted workplan which are not involved in a dispute process initiated by the Respondent. All interim measures in the submitted workplan which are not in dispute and which EPA approves, shall be implemented in accordance with the terms and schedules contained therein. Interim measures subjected to dispute resolution shall be implemented in accordance with the final terms and schedules decided upon in such process.

(11) If Respondent elects to perform interim measures where there is no definite need to protect health and/or the environment, then Respondent may request EPA's review (either formal or informal) of its proposed action to evaluate whether said action would be consistent with future corrective actions.



(2) EPA will afford Respondent an opportunity to meet with EPA representatives, not later than 30 calendar days from Respondent's receipt of EPA disapproval, to discuss EPA's/Respondent's problems with such workplans and/or reports, to propose alternative workplans and reports, and to propose suggestions for resolving such problems. EPA's and Respondent's representatives who meet and discuss such matters shall use their best efforts to resolve any such problems in accordance with generally accepted sound scientific and engineering principles and practices. If a resolution is agreed to, then EPA will approve the workplans and/or reports to the extent required to satisfy such agreement. If a resolution is not agreed to, then the Respondent may invoke the dispute resolution process provided in paragraph 32 below. An alleged failure by the Respondent to properly address EPA comments sent to it shall be resolved (unless Respondent capitulates) by Respondent invoking the said disputes resolution process.

(3) Each written deficiency notice received by the Respondent from EPA which is not submitted to the disputes resolution process nor resolved to EPA's satisfaction informally, shall be conceptually and physically integrated into and with each relevant workplan, report, and other appropriate document.

(4) As to deficiencies noted by EPA which are submitted to the disputes resolution process, the Respondent shall make note of (and reference to) the final decision from the disputes resolution process, in each affected workplan and/or report and/or other document in a manner which conforms with such decision.



1 (5) The actions required by (3) and (4) above shall be accomplished  
2 not later than 30 days after receipt by Respondent of EPA comments (or  
3 receipt by Respondent of the final decision in the disputes resolution  
4 process) or such later time as EPA may approve upon Respondent's showing  
5 of need for more time.  
6

7 Public Review and Comments.

8 B. (1) Upon receipt from Respondent of a written report concerning  
9 corrective actions (interim or final measures) to be taken at the  
10 Facility, EPA will make available to the public for inspection and review  
11 and comment: the corrective measures evaluation report; the RFI report;  
12 any corrective measure recommendation; any EPA justification for  
13 supporting/approving a corrective measure. EPA will allow the public 30  
14 calendar days at a minimum for submitting comments. EPA also has the  
15 right to afford a longer or additional periods for public review and  
16 comment if it determines that such further time is beneficial to the  
17 public interest.

18 (2) When the public comment periods have closed, EPA will notify the  
19 Respondent of the corrective action measure EPA has approved/selected, if  
20 any. If such measure is other than the measure EPA previously tentatively  
21 selected, then EPA will explain in writing to Respondent EPA's reason for  
22 such different selection.

23 (3) EPA will include in its notice of deficiencies and/or selection  
24 of measure decision when that is communicated to the Respondent, all  
25 appropriate public comments received on the proposed measure, and a  
26 requirement that the Respondent perform necessary additional corrective  
27 measure evaluations (if any) before Respondent implements the EPA selected  
28

measure. If additional investigative activity indicates a substantial modification may be warranted as to the measure EPA selected after public comment, then EPA may initiate a second public comment period and proceed as described in subparagraphs (1) and (2) above.

(4) If, after 120 calendar days elapse following the close of the most recent public comment period pursuant to (1) through (3) above, and EPA and Respondent have not successfully negotiated an agreed order for the design and implementation of the EPA-selected corrective measure, EPA reserves all rights it may have under any law to implement such measure as corrective action, as response action, or otherwise.

#### Quality Assurance.

23. A. Throughout all sample collections and analysis activities performed pursuant to this order or its Attachments, Respondent shall use EPA-approved quality assurance, quality control, and chain-of-custody procedures as identified in relevant EPA guidance documents.

B. In addition, Respondent shall:

(1) Follow the EPA guidance for sampling and analysis contained in the document entitled "Test Methods for Evaluating Solid Waste (SW-846), November 1986 edition.

(2) Consult with EPA in planning for, and prior to, field sampling and laboratory analysis.

(3) Inform the project coordinator in advance of what laboratories will be used by Respondent for identified samples.

(4) Ensure that laboratories used by Respondent for analyses of samples perform such analyses according to the EPA methods included in "Test Methods for Evaluating Solid Waste (SW-846) November 1986 edition.

1 (5) Ensure that laboratories used by Respondent for analyses  
2 participate in a quality assurance/quality control program equivalent to  
3 that which is followed by EPA. As part of such a program, and upon  
4 request by EPA, Respondent shall have such laboratories perform analyses  
5 of samples provided by EPA to demonstrate the quality of the analytical  
6 data typically produced by them.

7 (6) Use EPA guidance documents to evaluate all data to be used in  
8 connection with carrying out the terms of this order.

9 C. The respondent shall comply with all EPA approved health and safety  
10 plans.

11 Access To Premises.

12 24. A. EPA and/or any EPA representative are authorized to (and have the  
13 right and power to) enter and freely move about all areas at the facility (or  
14 wherever work pursuant to this order is actually or putatively being done)  
15 after the effective date of this order (and before its complete satisfaction)  
16 for the purposes of inspecting and/or overseeing the performance of work  
17 related to carrying out the terms of this order. Such inspecting and  
18 overseeing includes activities such as interviewing facility personnel and  
19 contractors; inspecting records, operating logs, and contracts related to the  
20 facility; reviewing the progress of the Respondent in carrying out the terms  
21 of this order; conducting such tests, sampling or monitoring as EPA or its  
22 Project Coordinator deem necessary; using a camera, sound recording, or other  
23 memorializing equipment; and verifying the reports and data submitted to EPA  
24 by the Respondent. The Respondent shall permit such persons to inspect and  
25 copy all records, files, photographs, documents, and other writings, including  
26 all sampling and monitoring data, that pertain to work undertaken pursuant to  
27 this order.



1 B. Respondent shall assure that EPA authorized representatives are  
2 promptly afforded ingress to the facility and opportunity to exercise the  
3 forgoing rights and powers.

4 C. When acting pursuant to the authority of subparagraph A., (1) EPA  
5 shall confine its entries onto facility premises to reasonable days of the  
6 week and reasonable times of day, (2) EPA shall inform Respondent's  
7 representatives immediately upon each entry of such fact and of the identity  
8 of the persons entering.

9 D. To the extent that work required by this order (including any item  
10 incorporated or to be incorporated into this order) must be done on premises  
11 not owned or controlled by Respondent, Respondent shall use its best efforts  
12 to obtain site entry agreements from the present owner(s) of such property  
13 within 30 calendar days of approval of any such item for which site access is  
14 required. Best efforts as used in this paragraph shall include, at a minimum,  
15 a certified letter from Respondent to the present owners of such property  
16 requesting such agreements to allow Respondent and EPA and its authorized  
17 representatives to enter such premises. Any such entry agreement when formed  
18 is thereby incorporated into this order. In the event that such entry  
19 agreements are not obtained when and as required by this order, Respondent  
20 shall notify EPA in writing within 15 calendar days thereafter regarding both  
21 the efforts undertaken, and its failure, to obtain such agreements.

22 E. Nothing in this order limits or adversely affects EPA's right to enter  
23 any premises and perform activities on such premises after entry pursuant to  
24 applicable law, including RCRA and CERCLA.  
25  
26  
27  
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1                                   Sampling and Data/Records Availability.

2       25. A. The Respondent shall (1) submit to EPA with its progress reports all  
3       quality assured results of all sampling and/or tests or other data generating  
4       activities performed by, or on behalf of, the Respondent, by activity related  
5       to carrying out or disputing the terms of this order (including any item  
6       incorporated into this order) and (2) allow EPA representatives to inspect and  
7       examine on request all raw data and records underlying or related to results  
8       so required to be submitted.

9       B. Respondent shall notify EPA at least 3 calendar days in advance before  
10      engaging in any field activities, such as soil sampling, well drilling,  
11      geophysical studies, installing equipment, or ground water or surface water  
12      sampling.

13      C. At the request of EPA, Respondent shall permit and allow EPA or its  
14      authorized representative to take split samples of any samples collected by  
15      Respondent.

16      D. EPA may make available to the public whatsoever analytical data  
17      records are submitted by Respondent to EPA as well as any record which has not  
18      been claimed (as of the release date) to be confidential business information  
19      under 40 CFR Part 2. As requested by Respondent, EPA agrees to send to  
20      Respondent, a copy of its responses to letters requesting records under the  
21      Freedom of Information Act concerning activities performed by Respondent under  
22      the terms of this order.

23                                   Confidential Business Information.

24      26. Respondent may assert a business confidentiality claim covering all or  
25      part of any information submitted to EPA pursuant to this order. Any  
26      assertion of confidentiality shall be adequately substantiated by Respondent  
27

1 when such contention is first made. Information determined to be confidential  
2 by EPA shall be disclosed only to the extent permitted by 40 CFR Part 2. If  
3 no such confidentiality claim accompanies information when it is submitted to  
4 EPA, it may be made available to the public by EPA without further notice to  
5 the Respondent. The Respondent waives all confidentiality claims with regard  
6 to any physical or analytical data it may submit to EPA pursuant to this order.

7  
8 Records Preservation.

9 27. A. Respondent shall preserve, until this order is completely satisfied,  
10 and for a minimum of at least 4 years thereafter, all data, records and  
11 documents in its possession or in the possession of its divisions, officers,  
12 directors, employees, agents, contractors, successors and assigns which relate  
13 in any way to this order or to hazardous waste management and/or disposal at  
14 the Facility. After 4 years, Respondent shall make such records available to  
15 EPA for inspection or shall provide copies of any such records to EPA.  
16 Respondent shall notify EPA 30 days prior to the destruction of any such  
17 records, and shall provide EPA with the opportunity to take possession and  
18 ownership of any such records.

19 Project Coordinator

20 28. A. Not later than seven calendar days after the effective date of this  
21 order, EPA and Respondent shall each notify each other in writing of the name,  
22 title, address and phone number of their respective designated Project  
23 Coordinator.

24 B. Each Project Coordinator shall be made responsible for overseeing the  
25 implementation of this order. The EPA Project Coordinator will be EPA's  
26 designated representative at the Facility.



1 C. All communications between Respondent and EPA, and all documents,  
2 reports, approvals, and other correspondence concerning the activities  
3 performed pursuant to the terms and conditions of this order shall be directed  
4 to EPA through its Project Coordinators.

5 D. EPA and Respondent shall give at least 10 days written notice to one  
6 another before changing Project Coordinators.

7 E. The absence of the EPA Project Coordinator from the Facility shall not  
8 be any justification or excuse for the stoppage of work required or directed  
9 by this order and/or its Attachments.

10  
11 Community Protection.

12 29. If EPA determines that activities in compliance or noncompliance with  
13 this order, have caused or may cause a release of hazardous waste, hazardous  
14 constituent, or a pollutant or contaminant, or a threat to the public health  
15 or to the environment, EPA may order Respondent to stop further implementation  
16 of this order for such period of time as may be needed to abate any such  
17 release or threat and/or to undertake any action which EPA determines is  
18 necessary to abate such release or threat.

19 Notifications.

20 30. A. Unless otherwise specified, reports, correspondence, notices,  
21 comments, requests, or other submissions relating to or required by this order  
22 shall be in writing and shall be sent to:

23  
24 FOR EPA: Charles W. Rice, M/S - HW-112  
25 U.S.E.P.A. RCRA Compliance Section  
1200 Sixth Avenue  
Seattle, Washington 98101

26 FOR RESPONDENT: Not later than the 15th day after the effective  
27 date of this order, Respondent shall provide EPA with the  
28 name and address to which EPA may send correspondence and  
notices as anticipated by this order.

1 B. A true copy of all matters sent to EPA pursuant to the terms of this  
2 order and/or its Attachments, shall be contemporaneously sent to the  
3 Department of Ecology for the State of Washington.  
4

5 Delay In Performance/Stipulated Penalties.

6 31. A. Unless there has been such a written extension by EPA of a date for  
7 compliance (or excusable delay as defined in paragraph 33), if Respondent  
8 fails to fulfill any requirement on time as set forth in this order or in any  
9 item incorporated into this order, or in any EPA approved item, then  
10 Respondent shall pay stipulated penalties for any such delays to the extent  
11 provided in this paragraph.

12 B. These stipulated penalties for delay days reflect the parties'  
13 expectations that while a delay in performing may occur, in most (if not all)  
14 instances it will probably be cured by not overly tardy performance. For that  
15 reason, when delay days exceed twenty-one consecutive calendar days, no  
16 further liability for any stipulated penalties for the particular delays  
17 involved shall be incurred under this paragraph. But EPA shall be free to  
18 pursue its statutory rights to obtain civil penalties for all delay days in  
19 excess of 21 days involved in those particular delays.

20 C. When the total delay days in a particular incident do not exceed  
21 twenty-one consecutive calendar days, the Respondent shall pay the following  
22 stipulated penalties for such delays:

23 (1) For failure to commence work when required pursuant to this order:  
24 \$500.00 per day for delay days 1 through 7, and \$5,000.00 for each seven  
25 day delay thereafter (or portion thereof);  
26  
27  
28

(2) For failure to submit a preliminary or final reports when required pursuant to this order: \$500.00 per day for delay days 1 through 7, and \$5,000.00 for each seven day delay thereafter (or portion thereof);

(3) For failure to submit progress reports when required pursuant to this order: \$100.00 per day for delay days 1 through 7, and \$1,000.00 per day for each seven day delay thereafter (or portion thereof);

(4) For failure to submit any other deliverable item when required pursuant to this order: \$100.00 for delay days 1 through 7, and \$1,000.00 for each seven day delay thereafter (or portion thereof);

(5) For failure to complete on time one or more tasks specified and given a deadline completion time in an EPA approved report, plan, specification, schedule, extension request, or in an Attachment hereto, \$100.00 for delay days 1 through 7, and \$1,000.00 for each seven day delay thereafter (or portion thereof).

D. In computing stipulated penalties: (1) the first calendar day after the deadline date shall be deemed delay day #1; (2) the calendar day on which a delay is cured shall be deemed the final delay day and penalties shall attach for it; and (3) stipulated penalties may accumulate separately but concurrently for delays as to separate requirements for performance.

E. All penalties owed to EPA pursuant to this paragraph shall be paid not later than the 30th calendar day after receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest shall begin to accrue on the unpaid balance of penalties due at the end of such 30 days. Such penalties are payable pursuant to this order as if adjudged after a hearing thereon.

F. All penalties shall be made payable by certified or cashier's check to the Treasurer of the United States of America and shall be remitted to:



1 EPA Region 10 Regional Hearing Clerk  
2 U. S. Environmental Protection Agency,  
3 P.O. Box 360903M  
4 Pittsburgh, Pa. 45251

5 G. A carbon copy of each such transmittal shall be sent to the said  
6 Regional Hearing Clerk at:

7 1200 Sixth Ave, Suite 1200 M/S SO - 125  
8 Seattle, Washington 98101

9 H. Copies of the transmittal of payment shall be sent simultaneously to  
10 the EPA Project Coordinator.

11 I. All payments shall reference the name of the Facility, the  
12 Respondent's name and address, and the EPA docket number of this action.

13 J. Respondent may dispute EPA's right to stipulated penalties by invoking  
14 the dispute resolution procedures set forth in paragraph 32, below. If  
15 Respondent does not prevail in such dispute resolution, EPA shall have the  
16 right to seek penalties for all delay days occurring before and during the  
17 period of dispute. If Respondent prevails in dispute resolution no penalties  
18 for the delay days before or during the dispute period shall be payable.

19 K. Neither the filing of a petition to resolve a dispute nor the payment  
20 of penalties shall alter in any way Respondent's obligation to complete the  
21 performance of the terms of this order.

22 Dispute Resolution Procedures.

23 32. A. If Respondent disagrees, in whole or in part, with any EPA written  
24 disapproval, modification, or other decision or directive made by EPA pursuant  
25 to the terms of this order, Respondent shall notify EPA in writing of its  
26 objections and the basis therefor not later than 15 calendar days after  
27 Respondent's receipt of EPA's disapproval, decision, directive, etc.

1 B. To be valid for consideration, such notice must set forth  
2 substantially: the specific points of the dispute; the position Respondent  
3 contends should be adopted as consistent with the requirements of this order;  
4 the basis for and reasoning supporting Respondent's position; and an  
5 identification of the precise matters which it considers necessary for EPA's  
6 determination.

7 C. Not later than 14 calendar days after EPA's receipt of such written  
8 notice, EPA shall provide to Respondent its initial decision on such dispute.  
9 Thereafter, Respondent shall have seven additional calendar days during which  
10 to display to EPA arguments not previously made, and to urge (on the basis  
11 thereof) that EPA should reconsider and vacate its initial dispute decision,  
12 or reconsider and modify such dispute decision in the respects urged.

13 D. Unless vacated, or modified as urged by the Respondent, the initial  
14 EPA dispute decision shall be complied with according to its terms by both EPA  
15 and the Respondent commencing the 22nd day after EPA's receipt of the initial  
16 written notice from Respondent pursuant to subparagraph A unless such EPA  
17 decision is reversed or modified upon judicial review which shall be available  
18 only as provided in 5 U.S.C. §703 in an enforcement proceeding.

19 E. The existence of a dispute pursuant to this paragraph, and/or the  
20 consideration of matters in dispute, shall not excuse, toll, or suspend any  
21 compliance deadline otherwise existing pursuant to this order, or any  
22 performance time incorporated or to be incorporated into this order.

23 F. In any dispute resolution or proceeding consequent thereon, whatever  
24 informal administrative record EPA may possess regarding occurrences  
25 antedating but leading to its disputed action, shall be considered in the  
26 dispute resolution process as the primary basis for deciding the dispute.

1 G. Any EPA action challenged pursuant to this paragraph shall be ruled  
2 valid, enforceable, and effective excepting only to the extent that Respondent  
3 meets its burden of proof or persuasion set forth in the following sentence.  
4 Regardless of the forum (administrative/judicial) or the manner  
5 (claim/defense) in which the issue may be raised, it shall be and always  
6 remain the burden of the Respondent to prove by a preponderance of the  
7 evidence that an EPA action which it disputes pursuant to this paragraph 32  
8 was/is arbitrary, capricious, an abuse of discretion, not in accordance with  
9 law, and/or not in accordance with the then pre-existing terms of this order.

10 H. All of the foregoing shall not preclude the informal dialogue and  
11 resolution of differences between Respondent and EPA.

12  
13 Force Majeure and Excusable Delay

14 33. A. Respondent shall perform the requirements of this order not later  
15 than the time limits set forth in the order and its present and future  
16 Attachments unless the performance is prevented or delayed by events which  
17 constitute a force majeure. Respondent shall have the burden of proving such  
18 a force majeure. A force majeure is defined as any event arising from causes  
19 not foreseeable and beyond the control of Respondent which could not be  
20 overcome by due diligence and which delays or prevents performance by a date  
21 required by this order. Such events do not include increased costs of  
22 performance, changed economic circumstances, normal precipitation events, or  
23 failure to diligently apply for and thereby obtain federal, state or local  
24 permits.

25 B. Respondent shall notify EPA in writing not later than seven calendar  
26 days after it becomes aware of events which Respondent knows or should know  
27 constitute a force majeure. Such notice shall estimate the anticipated length  
28



1 of delay, including necessary demobilization and remobilization, its cause,  
2 measures taken or to be taken to minimize the delay, and an estimated time  
3 table for implementation of these measures. Failure to comply with the notice  
4 provision of this section shall constitute a waiver of Respondent's right to  
5 assert a force majeure.

6 34. If EPA determines that the delay has been or will be caused by  
7 circumstances not foreseeable and beyond Respondent's control, which could not  
8 have been overcome by due diligence, the time for performance for that element  
9 of the relevant work plan or program plan may be extended, upon EPA approval,  
10 for a period equal to the delay resulting from such circumstances. This shall  
11 be accomplished in writing therefor. Such an extension does not alter the  
12 schedule for performance or completion of other tasks required by any workplan  
13 unless these are also specifically altered by amendment of the order. In the  
14 event that EPA and Respondent cannot agree that any delay or failure has been  
15 or will be caused by circumstances not reasonably foreseeable and beyond the  
16 control of Respondent, which could not have been overcome by due diligence, or  
17 if there is no agreement on the length of the extension, the dispute shall be  
18 resolved in accordance with the provisions of paragraph 32 of this order.

19 Reservation of EPA Rights and Authorities.

20 35. A. EPA expressly reserves all rights and defenses that it may have,  
21 including the right to disapprove of or request modification of work performed  
22 by Respondent pursuant to this order.

23 B. EPA hereby reserves all of its statutory and regulatory  
24 powers, authorities, rights, remedies, both legal and equitable,  
25 which may pertain to Respondent's failure to comply with any of the  
26 terms of this order, including without limitation the imposition of  
27

1 penalties under §3008(h)(2) of RCRA, 42 U.S.C. 6928(h)(2). This order shall  
2 not be construed as a covenant not to sue, release, waiver or limitation of  
3 any rights, remedies, powers and/ or authorities, civil or criminal, which EPA  
4 has under RCRA, CERCLA, or any other statutory, regulatory, or common law  
5 enforcement authority of the United States.

6 C. Compliance by Respondent with the terms of this order shall not  
7 relieve Respondent of its obligations to comply with RCRA or any other  
8 applicable local, State or federal laws and regulations.

9 D. The issuance of this order and Respondent's agreement and consent to  
10 comply shall not limit or otherwise preclude EPA from taking additional  
11 enforcement action pursuant to §3008(h) should it determine that such actions  
12 are warranted.

13 E. This order is not intended to be (nor shall it be construed as a . .  
14 permit. This order does not relieve Respondent of any obligation to obtain  
15 and comply with any local, state or federal permits.

16 F. Nothing in this order shall operate to diminish or reduce the powers  
17 and rights which EPA may have (under some statute of the United States to  
18 perform one or more portions of the work described in this order, and/or to  
19 perform any additional site characterization and/or feasibility study, and/or  
20 to perform response/corrective actions at one or more sites/facilities covered  
21 by this order according to the terms of such statute) in absence of this  
22 order. EPA reserves the right to obtain reimbursement from the Respondent for  
23 costs and/or expenditures of the United States in any instance provided by  
24 statute, and Respondent's statutory liability in that regard is in no way  
25 diminished or inhibited by this order or any terms contained therein.  
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B. No advice, guidance, suggestions, or comments by EPA or any of its employees regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent will be construed as relieving Respondent of its obligation to obtain written approval, if and when specified in this order.

40. If any provision or authority of this order or the application of this order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the order shall remain operative.

41. A. Respondent shall fulfill, comply with, and satisfy all terms and provisions of this order, the Attachments hereto and any reports, plans, specifications, schedules, extension requests, or other writing which is submitted for, and which receives, EPA approval.

B. The provisions of this order shall be satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that the terms of this order, including any additional tasks determined by EPA to be required pursuant to this order, or any continuing obligation or promises emanating from this order, have been satisfactorily completed.

Effective Date.

42. The effective date of this order shall be five calendar days after the date on which it is signed and issued by EPA.

DATED:

9-30-88

BY:

Charles E. Findley  
Charles E. Findley  
Director, Hazardous Waste Division  
EPA Region 10

STIPULATED, AGREED,  
And APPROVED FOR ISSUANCE  
WAIVING NOTICE:

Date: 9-29-88

Date: 9-30-88

Harley J. Calcutt

For Respondent

Charles E. Findley

For EPA